IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 620 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S STEEL BUILD

Versus

V G GUPATA

Appearance:

MR KA PUJ for Petitioner

MR RM CHHAYA for Respondent No. 1

MR ANSHIN H DESAI for Respondent No. 2

Mr.M.A.BUKHARI, A.P.P. for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The order of the Metropolitan Magistrate, Ahmedabad, dated 16.9.1998 dismissing the complaint of

the revisionist u/s. 138 of the Negotiable Instrument Act is under challenge in this Revision.

2. Shri K.A.Puj, learned Counsel for the revisionist, Shri R.M.Chhaya, learned Counsel for the respondent No.1, Shri A.S.Desai, learned Counsel for the respondent No.2 and Shri M.A.Bukhari, learned A.P.P. for the respondent No.3 - State have been heard.

3. Brief facts are that the revisionist filed complaint u/s.138 of the Negotiable Instrument Act against the respondents No.1 & 2. It may be noted that the respondent No.2 is the wife of the respondent No.1. In short the allegations in the complaint are that the respondent No.1 had taken a loan of Rs.2,50,000/- from the revisionist with 3 per cent p.a. interest. A receipt was also issued in token of having received the said amount. The accused - respondent No.1 delivered a cheque of Rs.2,50,000/- on 4.2.1998 which was drawn and signed by the respondent No.2 and this cheque was payable from the account maintained by the respondent No.2. When the cheque was presented before the Bank it was dishonoured on ground of insufficient fund. After giving notice required under the statute a complaint was filed under Section 138 of the Negotiable Instrument Act.

4. The complainant examined himself u/s.200 Cr.P.C. He did not examine any witness as required under Sec. 202 Cr.P.C. though the opportunity was given to the complainant to examine witnesses u/s.202 Cr.P.C. The revisionist - complainant intimated the Court that no other witnesses is to be examined. Thereafter the learned Metropolitan Magistrate considered the allegations made in the complaint and probably the statement of the complainant and dismissed the complaint by observing that the accused No.2 has not committed any offence u/s.138 of the Negotiable Instrument Act and since the cheque was not issued under the signature of the accused respondent No.1 he too has not committed any offence u/s.138 of the Negotiable Instrument Act. With these observations the complaint was dismissed hence this Revision.

5. In the impugned order it is clearly mentioned in the operative portion that the complaint was dismissed u/s.203 Cr.P.C. It appears that the learned Magistrate did not consider the provisions of Section 203 Cr.P.C. while dismissing the complaint under this section. This section obliges the Magistrate that if after considering the statement on oath, if any, of the complainant and all the witnesses and the result of the inquiry or

investigation, if any, u/s.202 Cr.P.C. the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and in every such case he shall briefly record his reasons for doing so.

6. In the instant case no witness was examined by the complainant nor any inquiry was conducted u/s.202 cr.P.C. Thus, the Magistrate was required to examine the statement on oath of the complainant. At the same time he was also required to consider other material on record, namely, the allegations in the complaint and also the allegations made in the statutory notice. It seems that the allegation in the statutory notice was not taken into consideration. Further, the Magistrate was not required to observe at this stage that no offence was committed by any of the two accused as has been done in the instant case. On the other hand all that he was required to see was whether there is no sufficient ground for proceeding against the accused. The ground for proceeding against the accused is certainly different from the ground for convicting the accused and at this stage the Magistrate was certainly in obvious error in observing that no offence was committed by any of the two accused.

7. I feel, it would not be desirable to make detailed observation about the material on record in this revision inasmuch as such observation is bound to prejudice the Cause of the complainant as well as the accused. Suffice it to say that in the statutory notice it is mentioned in Para : 3 that "both of you are aware that once having issued the cheque in favour of my client it is obligatory on your part to see that the cheque must be realised at the time when the same is presented for clearance."

8. It is also mentioned in Para : 1 of the Notice that "it was also stated by the addressee No.1 that since the addressee No.2 is his wife she is equally liable for payment of this amount along with interest and hence post dated cheque No.713665 was given in favour of the complainant."

9. This part of the allegation contained in the notice was not taken into consideration by the learned Magistrate. Likewise the allegations made in the complaint were also not properly considered by the learned Magistrate for coming to a conclusion that from the material on reecord no sufficient ground is made out for proceeding against either of the accused or against

both the accused. The statement of the complainant was also not appreciated in proper perspective. Consequently the impugned order being in violation of the provisions of Section 203 Cr.P.C. cannot be sustained.

10. The revision has therefore to be allowed and is hereby allowed. The impugned order is set aside. Criminal Case No.155 of 1998 is remanded to the Court of Metropolitan Magistrate Court No.20 at Ahmedabad with direction to admit it to its original number and shall afford opportunity to the revisionist to adduce additional evidence if so desired u/s.202 Cr.P.C. and thereafter after considering the statements and material on record brought by the complainant, appropriate order shall be passed in accordance with law.

sd/-

Date : October 12, 2000 (D. C. Srivastava, J.)

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